

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 1/28/2021 7:37:19 PM
To: Porter, Amy [Porter.Amy@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
CC: Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: RE: [REDACTED] Ex. 5 Deliberative Process (DP)

Yes, I was just about to respond to Larry to suggest that.

From: Porter, Amy <Porter.Amy@epa.gov>
Sent: Thursday, January 28, 2021 2:36 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>
Subject: FW: [REDACTED] Ex. 5 Deliberative Process (DP)

Rosemarie - Do you think we should put this on the weekly agenda today?

Thanks
Amy

From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>
Sent: Thursday, January 28, 2021 1:49 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Carroll, Thomas <Carroll.Thomas@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>; karen.dworkin@usdoj.gov; Patricia.McKenna@USDOJ.GOV; jeffrey.Sands@usdoj.gov; Douglas, Nathaniel (ENRD) <Nathaniel.Douglas@usdoj.gov>; Mahan, Ellen (ENRD) <Ellen.Mahan@usdoj.gov>; Neumann, Jennifer Scheller (ENRD) <Jennifer.Neumann@usdoj.gov>; Poux, Joseph (ENRD) <Joseph.Poux@usdoj.gov>; justin.smith@usdoj.gov; Miller, Wendy (ENRD) <Wendy.Miller@usdoj.gov>; Nichols, Danielle (PAO) <Danielle.Nichols@usdoj.gov>; Freeman, James (ENRD) <James.Freeman2@usdoj.gov>
Subject: [REDACTED] Ex. 5 Deliberative Process (DP)

Larry: I met with EES, LPS and ECS this morning and we made a number of tentative decisions on the 3 matters listed above.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- **Next steps** -- A question was raised as to whether the press statement should come from DOJ only or be a joint DOJ/EPA release. I am willing to work with you on this. As noted earlier, ENRD needs authority from DOJ leadership offices and the concurrence of our press office before we can issue this release, but we have begun the process of trying to secure these approvals hopefully some time next week.

I am adding John Fogarty and the ENRD SEPs Team for their awareness.

Please have your staff work directly with the appropriate ENRD staff on all these matters. I am also happy to answer any questions you might have.

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Wednesday, January 27, 2021 12:13 PM

To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>

Cc: Carroll, Thomas <Carroll.Thomas@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: Ex. 5 Deliberative Process (DP)

That's helpful. Tom Carroll will work with EES, and when they have a new draft, I'll share it with the press folks here and the new appointees. Thanks.

Larry

From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>

Sent: Wednesday, January 27, 2021 11:39 AM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Nichols, Danielle (PAO) <Danielle.Nichols@usdoj.gov>; justin.smith@usdoj.gov; Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>; Patricia.McKenna@USDOJ.GOV; Tom Benson <thomas.benson@usdoj.gov>; karen.dworkin@usdoj.gov; Oakes, Matthew (ENRD) <Matthew.Oakes@usdoj.gov>; Neumann, Jennifer Scheller (ENRD) <Jennifer.Neumann@usdoj.gov>; Carroll, Thomas <Carroll.Thomas@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: Ex. 5 Deliberative Process (DP)

A few more quick thoughts and then I need to turn this over to your staff and EES, LPS and OLA.

- You might want to include a sentence describing the additional relief in the separate settlement so readers will understand what the underlying dispute was really about and, particularly, what the court was referring to

when it said the settlement “accomplishes an enormous enviro benefit that is fully consistent with the goals of the CAA.”

Ex. 5 Deliberative Process (DP)

At this point, please have your staff coordinate with Danielle Nichols from OPA and your EES and LPS points of contact.

Thanks

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Wednesday, January 27, 2021 11:21 AM

To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>

Cc: Nichols, Danielle (PAO) <dnichols@jmd.usdoj.gov>; Smith, Justin (ENRD) <JSmith2@ENRD.USDOJ.GOV>; Mariani, Tom (ENRD) <TMariani@ENRD.USDOJ.GOV>; McKenna, Patricia (ENRD) <PMcKenna@ENRD.USDOJ.GOV>; Benson, Thomas (ENRD) <TBenson@ENRD.USDOJ.GOV>; Dworkin, Karen (ENRD) <KDworkin@ENRD.USDOJ.GOV>; Oakes, Matthew (ENRD) <MOakes@ENRD.USDOJ.GOV>; Neumann, Jennifer Scheller (ENRD) <JNeumann@ENRD.USDOJ.GOV>; Carroll, Thomas <Carroll.Thomas@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>

Subject: RE: Ex. 5 Deliberative Process (DP)

Bruce – Thanks for your note. I haven’t run it by folks here yet as I wanted to see if it was in the ballpark of what DOJ might accept. I made the one specific change you mentioned (see below), but am unclear on what additional “significant revisions” you had in mind. Could you let me know what other portions need to be revised, and then I’ll send it back to you and up the chain here.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Larry

From: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>

Sent: Wednesday, January 27, 2021 10:47 AM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: Nichols, Danielle (PAO) <Danielle.Nichols@usdoj.gov>; justin.smith@usdoj.gov; Mariani, Tom (ENRD) <Tom.Mariani@usdoj.gov>; Patricia.McKenna@USDOL.GOV; Tom Benson <thomas.benson@usdoj.gov>; karen.dworkin@usdoj.gov; Oakes, Matthew (ENRD) <Matthew.Oakes@usdoj.gov>; Neumann, Jennifer Scheller (ENRD) <Jennifer.Neumann@usdoj.gov>

Subject: RE: Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

After our call on Monday, I informed Jean, EES, LPS (our citizen suit experts) and our press office of your proposal. Do you know whether your staff has run the proposed language by any of those offices? Can you ask whomever is working on this at EPA to reach out to EES, LPS and Danielle Nichols, our press officer, to revise the statement so that it is something DOJ could join.

Before issuing the statement, however, I will need to run that by our Acting Associate AG. I'm happy to do so but need a version I can recommend.

Thanks.

Copying Tom, Karen, Patricia McKenna and Tom Benson from EES, Justin Smith and Matt Oakes from LPS, Jennifer Neumann from Appellate for her awareness, and Danielle Nichols.

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Sent: Wednesday, January 27, 2021 10:03 AM

To: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>

Subject: Ex. 5 Deliberative Process (DP)

Bruce,

Ex. 5 Deliberative Process (DP)

for relief. Ultimately, a federal consent decree was entered in July 2020 and Sierra Club and DTE signed a separate settlement agreement for additional relief that was consistent with the federal order and added several elements positive to air pollution control in the affected communities. The Trump Administration filed to block the Sierra Club/DTE agreement, but the opposition was rejected by the U.S. District Court for the Eastern District of Michigan on the grounds that the court lacked jurisdiction over Sierra Club's and DTE's "private contract." The court also found that the private agreement "does nothing to interfere with the consent decree," but actually "accomplishes an enormous environmental benefit that is fully consistent with the goals of the CAA." This Administration agrees with the decision of the District Court and does not intend to appeal the decision. We support settlements of citizen suits like Sierra Club's that are consistent with Section 304 of the Clean Air Act and, as the court found, better for the environment and not inconsistent with the federal enforcement remedy.

For your consideration. Please let us know what you think.

Thanks.

Larry

Larry Starfield
Acting Assistant Administrator
EPA Office of Enforcement and Compliance Assurance
(202) 505-0961 (cell)

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.